

ORDINANCE NO. 10

SERIES 2021

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE
AUTHORIZING A POTABLE WATER AGREEMENT FOR LOT 5, TRAPPER'S
CROSSING SOUTH, GUNNISON COUNTY, COLORADO**

WHEREAS, the Town of Crested Butte, Colorado is a home rule municipality duly and regularly organized and now validly existing as a body corporate and public under and by virtue of the Colorado Constitution and laws of the State of Colorado; and

WHEREAS, the Town Code § 13-1-280(e)(5) authorizes the Town to provide at its sole discretion extraterritorial water service by written agreement; and

WHEREAS, John and Michelle Cowell, are the owners of property located outside the Town limits and legally described as Lot 5, Trapper's Crossing South, according to the Plat filed on February 14, 1991, and recorded at Reception No. 425376 of the Gunnison County Clerk and Recorder's Office ("Property") and the Cowells desire to connect the Property to the Town Water System and receive potable water service from the Town; and

WHEREAS, the Town has agreed to provide potable water service to the Property pursuant to the terms and conditions of the Potable Water Agreement between the Town and the Cowells attached as **Exhibit A** to this Ordinance ("Potable Water Agreement") in exchange for the Cowells granting an easement to the Town for installation, operation, and maintenance of the existing Crested Butte Town water and sewer utilities located on the Property ("Easement"), a copy of which is attached as **Exhibit B** to this Ordinance; and

WHEREAS, the grant of the Easement confers substantial public benefits to the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF CRESTED BUTTE, COLORADO,**

Section 1. The Mayor is authorized to execute the Potable Water Agreement in exchange for Cowell granting and executing the Easement for installation, operation, and maintenance of the Crested Butte Town water and sewer utilities on the Property.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 7 DAY OF
JUNE, 2021.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC
HEARING THIS 21 DAY OF JUNE, 2021.

TOWN OF CRESTED BUTTE, COLORADO

By: _____

James A. Schmidt, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]



Exhibit A



POTABLE WATER SERVICE AGREEMENT

THIS POTABLE WATER SERVICE AGREEMENT is made and entered into this 22nd day of JUNE 2021, by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality ("Town"); and JOHN F. COWELL, IV RESTATED 2005 REVOCABLE TRUST, a Trust, whose address is 4400 Silas Creek Parkway, Suite 302, Winston-Salem, NC 27104 ("Cowell") (collectively "Parties").

Recitals

- A. The Town is a home rule municipality duly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado.
- B. The Town owns and operates the Town of Crested Butte water system ("Town Water System") in accordance with the laws of the State of Colorado, and in accordance with the Crested Butte Home Rule Charter and Crested Butte Municipal Code ("Town Code"), and various other Town ordinances, rules, regulations, policies, and resolutions. This Agreement is entered into in conformity with and subject to such charter, Town Code, ordinances, rules, regulations, policies, and resolutions.
- C. The Town has in place certain requirements for the extension of water service and associated systems outside the Town's boundaries codified in Section 13-1-280 of the Town Code. Pursuant to Town Code § 13-1-280(e)(5), the Town may provide extraterritorial water service by written agreement.
- D. The Town Water System includes a potable water line that runs along the north side of Journeys End Road in Gunnison County, Colorado. Journeys End is a utility easement ("Journeys End Utility Easement") created by the Plat of Trapper's Crossing South filed on February 14, 1991, and recorded at Reception No. 425376 of the Gunnison County Clerk and Recorder's Office ("Trappers Crossing Plat").
- E. Cowell owns the real property located at 367 Journeys End Rd, Gunnison County Parcel No. 3255-000-02-019 ("Cowell Property"). The Cowell Property is legally described in attached Exhibit A as Lot 5, Trapper's Crossing South, according to the Trappers Crossing Plat attached as Exhibit B and is located outside the Town's municipal boundaries.
- F. Cowell desires to utilize the Journeys End Utility Easement to connect the Cowell Property to the Town Water System and receive potable water service from the Town at some future point.
- G. The Town is willing and able to provide potable water service to the Cowell Property at the location of the Journeys End Utility Easement pursuant to the terms and conditions of this Agreement and in exchange for Cowell simultaneously entering into an associated Easement Agreement between the Parties. The Easement Agreement governs a grant of easement from Cowell to the Town for the existing sanitary sewer and water infrastructure on the Cowell Property.
- H. The Town has determined that this Agreement and all covenants in this Agreement are necessary to comply with the Town Code and other policies. By entering into this Agreement, the



Town is *not* representing that it is a regulated public utility or holding itself out to the public in general as capable of or intending to provide water service extraterritorially.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

Agreement

1. **Water Service to Cowell Property.** The Town shall provide potable water service to the Cowell Property in a maximum amount of 0.533 acre-foot per year subject to the terms and conditions of this Agreement. This amount is based on 0.39 acre-foot of water per year for indoor use within the two (2) single-family dwellings on the Cowell Property that collectively do not exceed 5,000 square feet in size. It also includes up to 0.143 acre-foot of water per year to irrigate up to 2,500 square feet of outdoor lawns and gardens.

1.1 **Limitations on Provision of Potable Water Service.** This Agreement is solely for the supply of potable water service as described in this Section 1 and does not authorize any other expansion or extensions of uses, connections, or service. The Town's water supply is dependent upon sources that are variable in quantity and quality beyond the Town's reasonable control. Therefore, no liability shall attach to the Town under this Agreement on account of any failure to accurately anticipate the availability of water supply or on account of an actual failure of water supply due to inadequate runoff, drought, poor quality, failure of infrastructure, or other occurrence beyond the Town's reasonable control. The Town agrees that it shall not treat actual or potential water users on the Cowell Property differently than it treats actual or potential water users within the Town's municipal boundaries except as provided for in this Agreement.

1.2 **Irrigation Water Use.** Cowell may elect to irrigate up to 2,500 square feet of lawns and gardens on the Cowell Property with potable water from the Town under this Agreement. Prior to commencing any such outdoor potable irrigation, Cowell must verify to the Town that it is in compliance with Town Code § 13-3-10 *et al*, pertaining to backflow prevention and cross-connection control regulations. Cowell shall accomplish any and all potable water irrigation in accordance with Town Code § 13-2-40 and the Town's general water policies.

1.3 **Raw Water Use.** The Town shall not provide any raw water for irrigation or any other use to the Cowell Property under this Agreement. However, nothing in this Agreement shall prevent Cowell from using or seeking a separate/additional source of raw water supply in accordance with Colorado water law governing the appropriation and use of water. In addition, nothing in this Agreement shall prevent the Town from taking any action in accordance with Colorado water law that it deems appropriate and necessary to protect its own water rights and supplies should Cowell seek to change any existing or develop any new raw water rights or supplies on the Cowell Property at any future point. There shall be no cross-connections between the Town Water System and any raw water supplies or infrastructure on the Cowell Property. Cowell shall install any necessary backflow prevention devices on any such raw water supplies or infrastructure on the Cowell Property as required by Town Code § 13-3-10 *et al*, including but not limited to the backflow assembly described under paragraph 2 below and the inspection, testing, and repair requirements described in Town Code § 13-3-60 and under paragraph 2.3 below. Cowell



is responsible for the proper installation, maintenance, and testing of any requisite backflow prevention devices and for assuring that unprotected cross-connections or structural or sanitary hazards do not exist on the Cowell Property.

1.4 Rules for Water Use. All provisions in this Agreement are rules and regulations governing the use of water on the Cowell Property. Cowell shall abide by the Town's ordinances, rules, and regulations governing the Town Water System as they apply additionally and equally to all Town Water System users, including but not limited to the Town Code provisions pertaining to conservation measures, curtailment during times of shortage, outdoor watering limitations, elimination of any actual or potential cross-connections, and utilization of water conservation devices. Cowell agrees to take reasonable efforts to prevent waste of water, as "waste" is defined in the Town Code, on the Cowell Property

1.5 Property Rights in Water. All water provided under this Agreement is on a contractual basis for use on the Cowell Property and all property rights to such water are reserved to the Town. This Agreement does not bestow upon Cowell any right to make a succession of uses of any potable water provided by the Town, and upon completion of the primary use of potable water on the Cowell Property, all dominion over such water shall revert in its entirety back to the Town. However, subject to the general prohibition against waste set forth in this Section 1, Cowell shall have no obligation to create any particular volume of return flow from use of the potable water provided under this Agreement. Cowell shall cooperate with the Town to reasonably measure and report its return flows to the extent that such measuring and reporting are required by the Colorado State Engineer.

2. Connection to Town Water System. Cowell may connect a water service line with a maximum size of one inch (1") to the Town Water System. Cowell shall bear all expenses associated with installation and construction of the 1" line and all related infrastructure (collectively the "Cowell Service Line"). Such infrastructure must include both a backflow prevention assembly and a meter located at the point where the Cowell Service Line connects to the Town Water System. The Town will provide Cowell with the appropriate meter at Cowell's expense. Cowell shall accomplish all construction and installation work relating to the Cowell Service Line in a workmanlike manner and in accordance with the engineered plans reviewed and approved by the Town in accordance with Town Code § 13-1-280(d) & (e) and any other applicable sections. Upon completion of the installation, Cowell's professional engineer shall certify in writing to the Town that the work was accomplished in a workmanlike manner in conformity with the Town approved engineering plans and with the water service line engineering feasibility study and hydraulic analysis called for in Town Code § 13-1-280(d), including but not limited to certification of the adequacy of the backflow prevention assembly.

2.1 Preconstruction documents. Cowell shall submit to the Town all plans and other documents called for by Town Code § 13-1-280 for review and approval and/or approval with conditions, in a timely manner prior to any construction pursuant to this Agreement.

2.2 Utility Easement. Cowell shall be responsible at its sole effort and expense for securing or confirming any easements that it needs to connect the Cowell Property to the Town Water System.



2.3 Inspection, Testing, and Repair. Cowell shall ensure that the Cowell Service Line and Property are available to Town representatives for inspection, as authorized in the Town Code, to confirm that the Cowell Service Line and associated backflow prevention assembly and meter have been constructed and installed in accordance with the Town approved engineering plans and feasibility study, that no cross-connections or other structural or sanitary hazards exist, that no treated municipal water is being used for outdoor irrigation or aesthetic purposes other than as provided in this Agreement, and that Cowell is in general compliance with all provisions in the Town Code and other Town ordinances, rules, regulations, and policies that govern the Town Water System. Specifically, but not exclusively, a certified cross-connection control technician shall test the Cowell Service Line backflow prevention assembly upon installation, and then once-per-year subsequently, at Cowell's expense in accordance with Town Code § 13-3-60. If the backflow prevention assembly is ever found to be defective, Cowell shall repair or replace the device for re-testing.

3. Operation, Maintenance, Cleaning, Repair, and Replacement (collectively "OMR"). Cowell shall be responsible for all OMR of the Cowell Service Line and shall accomplish such OMR in a workmanlike manner. In the event that Cowell plans a major repair or replacement to the Cowell Service Line, it shall provide the Town with reasonable advance notice of the work to be undertaken and the estimated time of completion. In the event that the Town discovers an emergency situation or condition (such, but not limited to, a pipeline rupture), it shall make all reasonable attempts to promptly notify Cowell.

4. Sewer Service. This Agreement does not govern extension of the Town's sewer system to the Cowell Property nor authorize Cowell to receive municipal sewer services from the Town.

5. Fees and Costs/Expenses. Cowell shall pay all fees and other charges required under this Agreement and Town Code § 13-1-280 in a timely manner. Any requisite sum that is not timely paid shall accrue interest at eighteen percent (18%) per annum, or the highest rate allowed by applicable law, whichever is less, commencing on the date such sum becomes due and owing.

5.1 System Development Fees. There are no system development fees within the meaning of Town Code § 13-1-280(4)(h) owed by Cowell under this Agreement.

5.2 Tap Fees. Cowell shall be responsible for all tap fees and one and one-half times (1.5X) the in-town rate in accordance with Town Code § 13-1-280(4)(i).

5.3 Service Fees. Cowell shall be responsible for all service fees at two times (2X) times the in-town rate in accordance with Town Code § 13-1-280(4)(j).

5.4 Fees and Costs. As partial consideration for this Agreement, the Town waives the costs and expenses requirements owed by Cowell and defined in Town Code § 13-1-280(6) that have been incurred by the Town in connection with its provision of potable water service to Cowell and with transacting this Agreement.

6. Consideration. The Town entering into this Agreement and granting Cowell consent to



connect to the Town Water System is consideration for Cowell's grant of easement to the Town for the existing sanitary sewer and water main located on the Cowell property pursuant to the associated Easement Agreement between the Parties.

7. Covenant Running with the Land. The recording of this Agreement shall create a covenant running with and for the benefit of the Cowell Property that restricts all use of potable water delivered to the Cowell Property to the terms and conditions of this Agreement and to all other Town Code provisions, ordinances, rules, regulations, and policies that govern the Town Water System as they apply additionally and equally to all Town Water System users. The Agreement and covenants shall be fully enforceable on the Cowell Property as if it were situated entirely inside the Town's municipal boundaries. The Agreement and the covenants shall further burden and benefit the Cowell Property and inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

8. Amendment / Termination. Except as provided above, this Agreement may only be amended or terminated in writing signed by both Parties or their successors or assigns. The term of this Agreement shall continue in perpetuity until such termination.

9. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered, emailed, or mailed by certified mail with return receipt requested to the addresses listed below or to any other address provided by notice under this paragraph. Nothing in this paragraph prohibits provision of notice as provided in the Colorado Rules of Civil Procedure for service of civil process.

If to the Town: Town of Crested Butte
 Attn: Town Manager; Town Public Works Director
 507 Maroon Avenue
 P.O. Box 39
 Crested Butte, CO 81224
 Phone: (970) 349-5338
 Email: dmacdonald@crestedbutte-co.gov;
 searley@crestedbutte-co.gov

With copy to: Patrick Miller & Noto, P.C.
 Attn: Scott Miller; Danielle Van Arsdale
 197 Prospector Drive, Ste. 2104A
 Aspen, CO 81611
 Phone: (970) 920-1030
 Email: miller@waterlaw.com; vanarsdale@waterlaw.com

If to Cowells: John and Michelle Cowell
 367 Journeys End Rd
 Crested Butte, CO 81224
 Phone: 970-765-1145
 Email: jfcowell@me.com



10. **No Regulated Public Utility Status: Extraterritorial Water Service Proprietary.** By entering into this Agreement, the Town is *not* agreeing to serve any other properties with extraterritorial water service, the provision of which remains solely proprietary and within the Town's sole discretion. This Agreement further does not render the Town a regulated public utility that is compelled to serve other parties similarly situated to Cowell. At no time shall Cowell, or its successors or assigns, petition the Colorado Public Utilities Commission to acquire jurisdiction over any water service, fee, rate, or rate set by the Town. If the Town is ever determined to be a regulated public utility by virtue of this Agreement, this Agreement shall terminate in its entirety and be of no further force or effect.
11. **Indemnification.** Cowell agrees to indemnify, defend, and hold the Town, and its elected officials, officers, employees, agents, attorneys, insurers, and insurance pools harmless from and against all liability, claims, damages, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss, or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Cowell's and/or its agents, representatives, or contractors' negligence or intentional misconduct in relation to installation, construction, use, or OMR of the Cowell Service Pipeline or potable water delivered via the Cowell Service Pipeline, or from Cowell's failure to comply with any term or condition of this Agreement. Cowell agrees to investigate, handle, respond to, and provide defense for and defend against any such liability, claims, or demands at its sole expense, including, without limitation, court costs and attorneys' fees, whether or not any such alleged liability, claims, or demands are found to be groundless, false, or fraudulent.
12. **Immunity.** Nothing in this Agreement shall be construed to abrogate or diminish any protections and limitations afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended, or any other law.
13. **Governing Law: Venue: Attorney Fees.** This Agreement shall be construed in accordance with the laws of the State of Colorado. Venue for all actions arising under this Agreement shall be Gunnison County, Colorado. If either Party takes legal action to enforce or defend any part of this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees and costs.
14. **Entire Agreement of the Parties.** This Agreement and the Easement Agreement executed simultaneously herewith constitute the entire agreement between the Parties and supersedes all prior agreements, offers, acceptances, and understandings of the Parties with respect to its subject matter. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter of these Agreements are merged into these Agreements.
15. **Recordation.** Following execution, the Town shall record this Agreement in the Gunnison County Clerk and Recorder's Office.
16. **Counterparts.** This Agreement may be executed in multiple counterpart signatures by the Parties, which taken together shall constitute the Agreement between the Parties.



17. Severability. If a court of competent jurisdiction ever holds any paragraph, term, or provision in this Agreement to be illegal or in conflict with any state or federal law, such determination shall not affect the validity of the Agreement's remaining paragraphs, terms, and provisions. The rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the invalidity.

18. Town Code and Code Amendments. References in this Agreement to any provision of the Code or to any other Town policy refer to any and all subsequent amendments or revisions to such Code or policy. Any amendment or revision shall have the same binding affect upon the Parties as the Code provision or Town policy in effect at the time of the execution of this Agreement. In the event there is a conflict between the Town Code and the language of this Agreement, the Parties language of the Town Code shall govern.

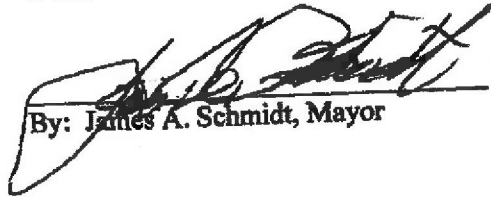
19. Incorporation of Exhibits. The attached Exhibit A and Exhibit B are incorporated into this Agreement by reference and are a material part of this Agreement.

WHEREFORE, the Parties indicate their acceptance of the terms and conditions of this Agreement by affixing their respective signatures below.

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TOWN OF CRESTED BUTTE
A Colorado home rule municipality


By: James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk



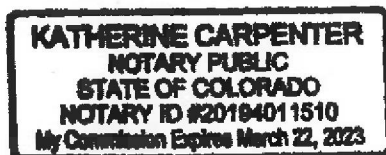
STATE OF COLORADO)
) SS.
COUNTY OF GUNNISON)

Subscribed and sworn to before me this 22nd day of June 2021, by James A. Schmidt as Mayor of the Town of Crested Butte.

Witness my hand and official seal.

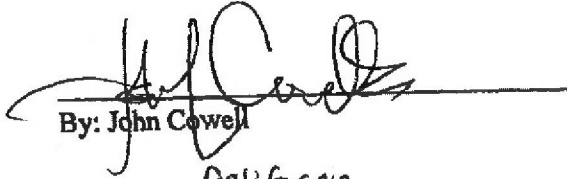
My Commission expires: March 22nd, 2023







JOHN F. COWELL, IV Restated 2005 Revocable Trust

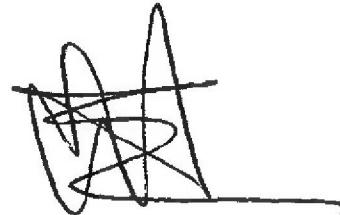

By: John Cowell

STATE OF ^{California} ~~COLORADO~~)
COUNTY OF Los Angeles) SS.

Subscribed and sworn to before me this 28th day of June 2021, by John Cowell, an individual.

Witness my hand and official seal.

My Commission expires: 09/03/2024



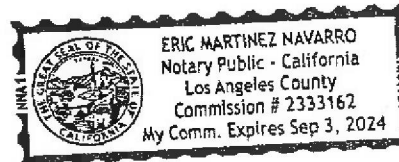




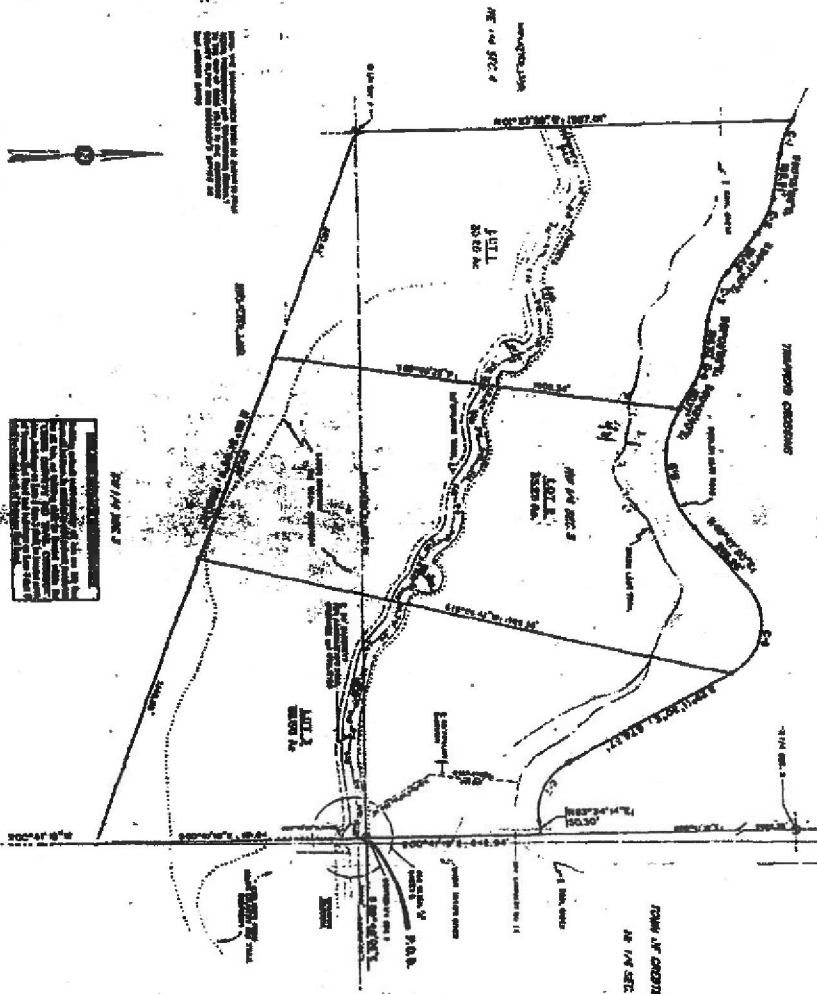
EXHIBIT A
(Cowell Property)

[attach legal description of Property here]

Lot 5, TRAPPER'S CROSSING SOUTH, according to the Plat thereof filed February 14, 1991 as
Reception No. 425376, County of Gunnison, State of Colorado.



TRAPPER'S CROSSING SOUTH

[illegible]

Dr. C. E. Rouse, in his paper on "The Problem of American Immigration in 1917," has shown that the immigration of the Chinese and Japanese into the United States has been a very small fraction of the total immigration. He has also shown that the immigration of the Chinese and Japanese into the United States has been a very small fraction of the total immigration. He has also shown that the immigration of the Chinese and Japanese into the United States has been a very small fraction of the total immigration.

1. **Maximum Depth:** The maximum depth of the water in the channel is 10 feet. The water is 10 feet deep in the center of the channel and 5 feet deep at the edges.



TELEPHONE COUNCILS NOW!

A NEW SERVICE has been set up by the N.Y.C. Telephone Council to help you find a telephone in the city. The service is free and is available to all who are in need of a telephone. The service is available to all who are in need of a telephone. The service is available to all who are in need of a telephone.

TO GET THE SERVICE, CALL 1-800-235-6672

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TO GET THE SERVICE, CALL 1-800-235-6672

[illegible]

Wm. A. Powell
June 18, 1877

[illegible]



TRAPPER'S CROSSING SOUTH

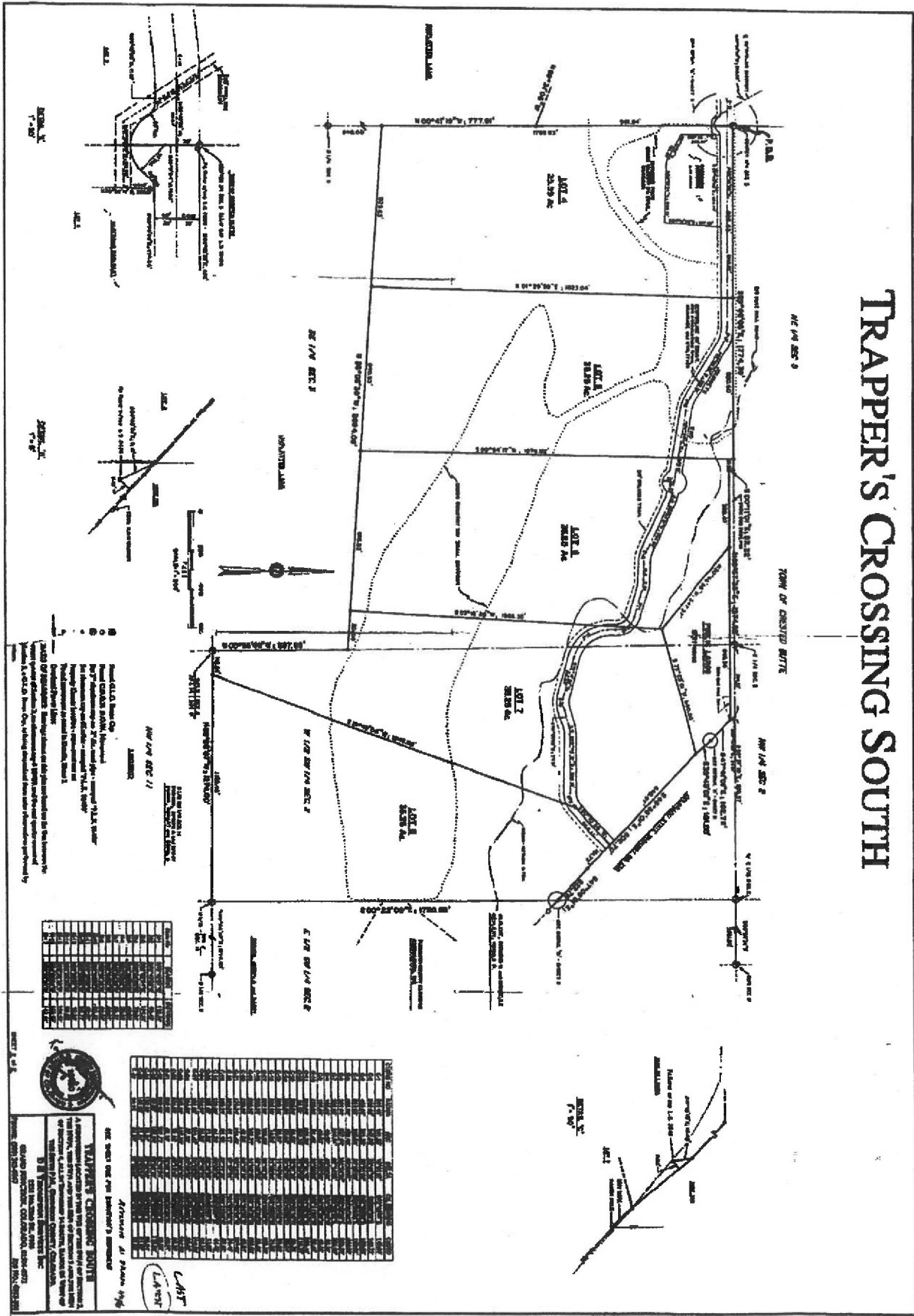


Exhibit B



EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this 22nd day of JUNE 2021, by and between the TOWN OF CRESTED BUTTE, a Colorado home rule municipality ("Town"); and JOHN F. COWELL, IV Restated 2005 Revocable Trust ("Cowell") (collectively "Parties").

Recitals

- A. Cowell owns the real property located at 367 Journeys End Road, Gunnison County Parcel No. 3255-000-02-019 ("Cowell Property"). The Cowell Property, legally described in Exhibit A as Lot 5, Trappers Crossing South, according to the Plat filed on February 14, 1991, and recorded at Reception No. 425376 of the Gunnison County Clerk and Recorder's Office ("Trappers Crossing South Plat"). The Cowell Property is approximately 35.25 acres in size and located outside the Town's boundaries. Exhibit A is incorporated into this Agreement by reference.
- B. The Town owns the water and sanitary sewer utility ("Town Utility") in the northern portion of the Cowell Property and is further identified in Exhibit B.
- C. The Town desires to operate and maintain the Town Utility located on the Cowell Property.
- D. In exchange for granting an easement to the Town for the Town Utility on the Cowell Property, the Town is willing to simultaneously enter into a Potable Water Service Agreement with Cowell to allow the Cowell Property to connect to the Town's water system ("Town Water System").

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

Agreement

1. Grant of Easement. Cowell grants to the Town an easement across the Cowell Property ("Town Utility Easement") for the Town Utility in accordance with the specifications and terms and conditions contained in this Agreement. The Town Utility Easement is perpetual and non-exclusive for purposes of Town access, excavation, construction, installation, operation, inspection, maintenance, cleaning, repair, and replacement of the Town Utility. The easement premises shall be twenty feet (20') wide, consisting of up to ten feet (10') from either side of the Town Utility and running the length of the utility, as shown on Exhibit B.
2. Non-exclusivity of Easement. Cowell shall retain the right to use and enjoy the property where the Town Utility Easement is located so long as such use and enjoyment does not unreasonably interfere with the Town's rights under this Agreement. Cowell shall not install or allow any permanent-type encroachments on the Town Utility Easement, including but not limited to buildings, sheds, trees, pavement, or other relatively non-removable structures. In the event that Cowell does in fact erect, install, or permit any such obstructions or encroachments to remain upon



the easement premises, Cowell understands and agrees that the Town may remove such obstruction or encroachment at Cowell's expense, after first giving Cowell a reasonable opportunity to self-perform the removal, and that the Town shall have no responsibility or liability for any damage or destruction to the removed obstruction or encroachment.

3. Operation, Maintenance, Cleaning, Repair, and Replacement (collectively "OMR"). The Town shall bear all expenses associated with OMR of the Town Utility and shall accomplish all OMR in a workmanlike manner to avoid or mitigate any damage to the Cowell Property. The Town may go upon the easement premises at any time to perform routine maintenance of the Town Utility. In the event that the Town plans major repairs or replacement of the Town Utility infrastructure within the premises of the Town Utility Easement, it shall provide Cowell with reasonable advance notice of the work to be undertaken and the estimated time of completion. The Town, however, may go upon the easement premises at any time in the event of an emergency situation or condition and undertake such repair or replacement activities as it deems necessary to properly resolve the emergency. In the event that Cowell discovers an emergency situation or condition pertaining to the Town Utility infrastructure, Cowell shall make reasonable attempts to promptly notify the Town.

4. Restoration of Surface Disturbance. If and to the extent any disturbance to the Cowell Property, landscaping (excluding trees), gardens, lawns, or grounds results from installation or OMR of the Town Utility, the Town shall regrade, restore, re-seed, and revegetate the disturbed areas with native grasses and shrubs to a reasonable extent at its sole expense. The Town shall warrant the survival of any such landscaping or revegetation work for a maximum of two (2) years.

5. Liability to Others. Each Party shall be responsible for any and all claims, demands, actions, losses, liabilities, damages, or expenses of whatever sort, including attorneys' fees, incurred or suffered by any person or entity arising out of or in connection with such Party's use or occupation of the Town Utility Easement premises, or the use or occupation of the easement premises by its agents, employees, contractors, invitees, or licensees. However, nothing in this Agreement shall be construed to abrogate or diminish any protections and limitations afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended, or any other law. In the event that the Parties or their respective officers, directors, members, employees, agents, contractors, representatives, heirs, or assigns may be held jointly and severally liable under any statute, decision, or other law providing for such joint and several liability for their respective activities on the easement premises, the obligations of each Party for damages shall be apportioned, as between the Town and Cowell, in direct proportion to the contributions of each as measured by the acts and omissions of each that in fact caused such legal injury, damage, or harm. The Parties agree to indemnify one another to the extent necessary to assure proper apportionment.

6. Governing Law; Venue; Attorney Fees. This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions arising under this Agreement shall be Gunnison County, Colorado. If either Party takes legal action to enforce or defend any part of this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or injunctive relief the court awards.



7. **Binding Agreement.** This Agreement and the grant of easement in this Agreement shall run with the burdened and benefitted lands and inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

8. **Entire Agreement of the Parties.** This Easement Agreement and the Potable Water Service Agreement executed simultaneously herewith constitute the entire agreement between the Parties and supersedes all prior agreements, offers, acceptances, and understandings of the Parties with respect to its subject matter. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter of these Agreements are merged into these Agreements.

9. **Recordation.** Following execution, the Town shall record this Agreement in the Gunnison County Clerk and Recorder's Office.

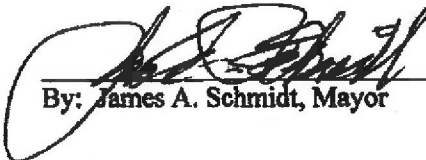
10. **Counterparts.** This Agreement may be executed in multiple counterpart signatures by the Parties, which taken together shall constitute the Agreement between the Parties.

REMAINDER OF PAGE INTENTIONALLY BLANK



WHEREFORE, the Parties indicate their acceptance of the terms and conditions of this Agreement by affixing their respective signatures below.

TOWN OF CRESTED BUTTE
A Colorado home rule municipality


By: James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk



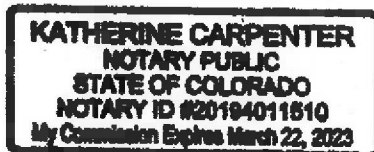
STATE OF COLORADO)
) SS.
COUNTY OF GUNNISON)

Subscribed and sworn to before me this 22nd day of June 2021 by James A. Schmidt as Mayor of the Town of Crested Butte.

Witness my hand and official seal.

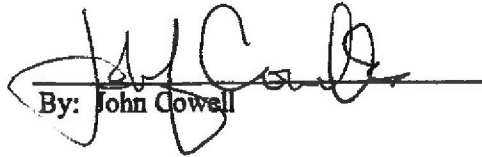
My Commission expires: March 22nd, 2023







JOHN F. COWELL, IV Restated Revocable Trust

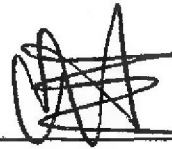

By: John Cowell

California
STATE OF ~~COLORADO~~)
COUNTY OF Los Angeles) SS.

Subscribed and sworn to before me this 28th day of June 2021 by John Cowell.

Witness my hand and official seal.

My Commission expires: 09/03/2024.



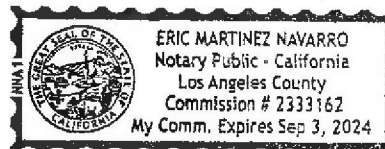




EXHIBIT A
(Cowell Property)

[attach legal description of Property here]

Lot 5, TRAPPER'S CROSSING SOUTH, according to the Plat thereof filed February 14, 1991
as Reception No. 425376, County of Gunnison, State of Colorado.

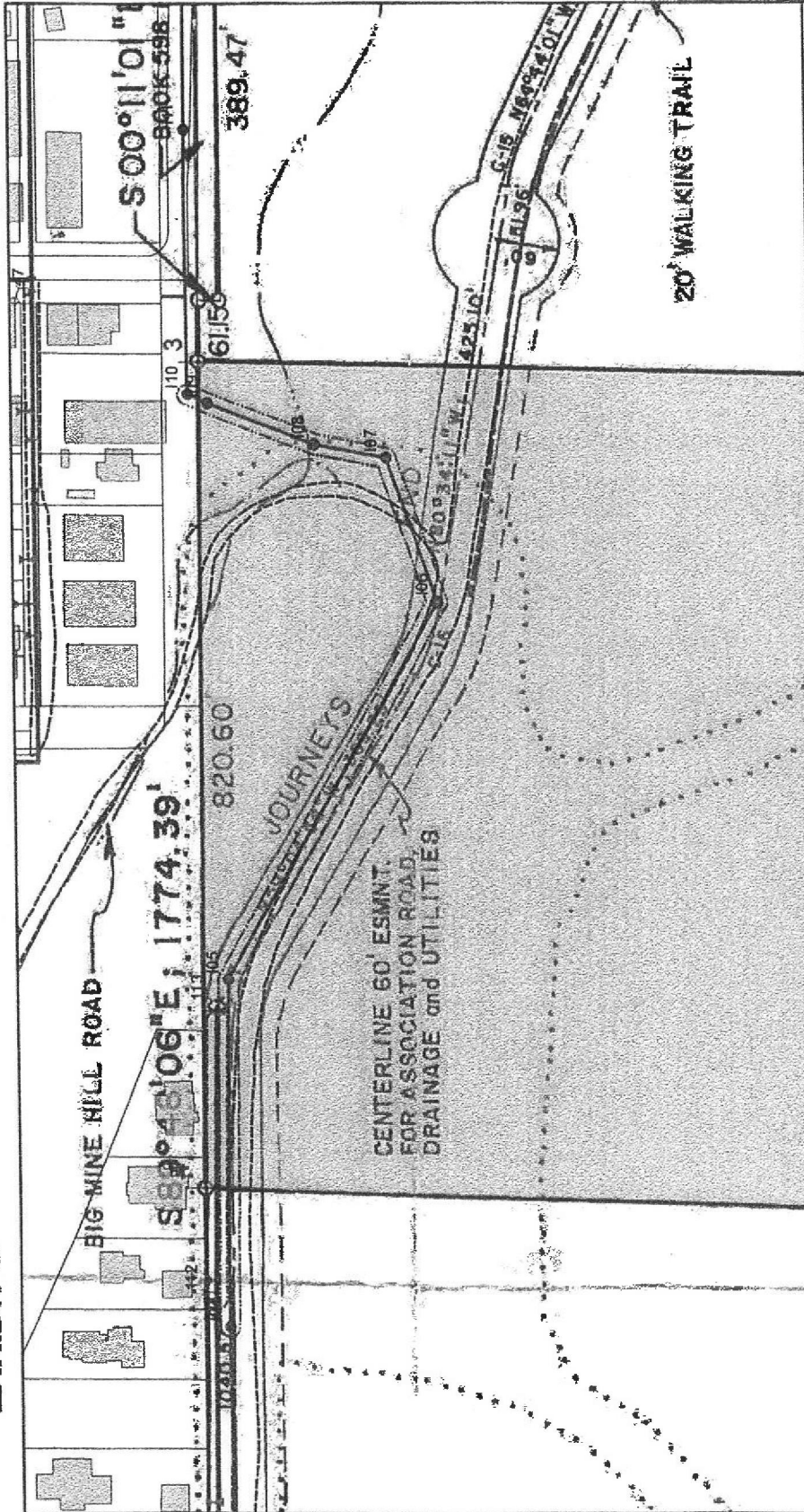


EXHIBIT B

[attach Town Utility and Town Utility Easement boundary exhibit here]



EXHIBIT B



Utilities 2021 - Town of Crested Butte, CO

- | | |
|------------------------------|------------------------|
| ● Manhole with Name | Water Valves |
| — Sanitary Sewer Lines | ◄ Main Valve |
| ◻ 20' Wide Sewer Line Buffer | ► Service Curb |
| — Storm Sewer | ◄ Hydrant Valve |
| ⊙ Hydrants | — Main Line |
| | — Service Line |
| | — Hydrant Service Line |
-
- | | |
|----------------------------------|--|
| ◻ 20' Wide Water Line Buffer | |
| ◻ Buildings | |
| ◻ Lot 5 Trapper's Crossing South | |
| — Paved Road | |
| — Unpaved Road | |



Date: May 25, 2021
Filename: ~publicworks\utilities_L5-TrappersSouth.mxd